
Pete Wilson, Governor

MITIGATED NEGATIVE DECLARATIONS

CEQA Technical Advice Series



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The **CEQA Technical Advice Series** is intended to offer CEQA practitioners, particularly at the local level, concise information about some aspect of the California Environmental Quality Act. This series of occasional papers is part of OPR's public education and training program for planners, developers, and others.

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Introduction



For many years, public agencies have adopted so called “mitigated Negative Declarations” in conjunction with project revisions which prospectively avoid or mitigate all of a project’s potential significant effects. In 1993, Senate Bill 919 (Chapter 1131, Stats. of 1993) and Assembly Bill 1888 (Chapter 1130, Stats. of 1993) enacted several amendments to CEQA which further encourage and support the use of mitigated Negative Declarations.

Mitigated Negative Declarations discusses Negative Declarations and mitigated Negative Declarations in light of these statutes. This brief advisory paper is aimed primarily at local public agencies and CEQA practitioners. It is intended to offer basic guidance in the preparation of mitigated Negative Declarations and to encourage their use under the proper circumstances. *Mitigated Negative Declarations* is neither a replacement of, nor an amendment to the *CEQA Guidelines*. All code citations refer to the Public Resources Code unless otherwise noted.



Negative Declarations

What is a Negative Declaration?

When faced with a discretionary project which is not exempt from the California Environmental Quality Act (CEQA), a Lead Agency must prepare an “initial study” to determine whether the project may have a significant adverse effect on the environment. If such an effect may occur, the Lead Agency must prepare an environmental impact report (EIR). If there is no substantial evidence for such an effect, or if the potential effect can be reduced to a level of insignificance through project revisions, a Negative Declaration can be adopted (Section 21080).

A mitigated Negative Declaration is used in the second situation. The statute provides that mitigated Negative Declarations are used “when the initial study has identified potentially significant effects on the environment, but (1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (2) there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment” (Section 21064.5).

Initial Study

An initial study formalizes the Lead Agency’s preliminary analysis to determine whether an EIR or Negative Declaration must be prepared. Most commonly, the initial study is based upon a checklist which illuminates the various environmental impacts which may result from development. The checklist, however, is only part of the initial study. The initial study also must explain the reasons for supporting the checklist findings and note or ref-

erence the source or content of the data relied upon in its preparation. Simply filling out an initial study checklist without citing supporting information is insufficient to show the absence of significant effects (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296). At the same time, keep in mind that the initial study is not intended to provide the full-blown analysis expected of a complete EIR (*Leonoff v. Monterey County Board of Supervisors* (1990) 222 Cal.App.3d 1337 and *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1996) 42 Cal.App.4th 608).

Supporting information may include specific studies which examine the potential significance of an anticipated environmental effect. It may include references to previous environmental documents or other information sources. In any case, a thorough, referenced initial study is a crucial part of the record supporting the Lead Agency’s determination to prepare a mitigated Negative Declaration.

CEQA requires that the Lead Agency, through its initial study, review the whole of a project. A project must not be broken into smaller parts, each of which alone might qualify for a Negative Declaration, in an attempt to avoid preparing an EIR (*Association for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151). The decision to prepare a mitigated Negative Declaration (and a Negative Declaration for that matter) must be grounded in an objective, good faith effort on the part of the Lead Agency to review the project’s potential for significant impacts (*Sundstrom v. County of Mendocino*, supra).

Section 15071 of the *CEQA Guidelines* requires that the initial study be attached to any Negative Declaration circulated for public review. The purpose for this is to document the reasons supporting the finding that the project will not result in a significant effect. OPR recommends that

prior to circulating a draft mitigated Negative Declaration the Lead Agency revise or annotate the initial study, if necessary, to reflect revisions to the project. The initial study circulated with a mitigated Negative Declaration should not indicate that there will be any significant effects of the project and should identify or reference the data which supports its determination that any potentially significant effects have been mitigated or avoided.

Fair Argument

The original determination made on the basis of the initial study whether to prepare either a Negative Declaration or an EIR is subject to the “fair argument” test (*Laurel Heights Improvement Assoc. v. U.C. Regents* (1993) 47 Cal.4th 376). In other words, if a fair argument can be raised on the basis of “substantial evidence” in the record that the project may have a significant adverse environmental impact - even if evidence also exists to the contrary - then an EIR is required. A Negative Declaration is authorized when the Lead Agency determines that no substantial evidence exists supporting a fair argument of significant effect. A mitigated Negative Declaration applies when changes to the project or other mitigation measures are imposed such that all potentially significant effects are avoided or reduced to a level of insignificance.

SB 919 adds to CEQA a definition of the term “substantial evidence” (subdivision (e), Section 21080). Although this does not affect application of the fair argument standard, it provides the Lead Agency a means by which to gauge the quality of evidence discovered during its review of a project. Similarly, a court examining the actions of the Lead Agency now has a consistent standard by which to judge the quality of the evidence which was before the Agency.

Pursuant to Section 21080, substantial evidence includes “facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.” It does not include “argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous, or evidence of social or economic impacts which do not contribute to, or are not caused by, physi-

cal impacts on the environment.” Further, public controversy over the possible environmental effects of a project is not sufficient reason to require an EIR “if there is no substantial evidence in light of the whole record before the lead agency that the project may have a significant effect on the environment” (Section 21082.2).

Project Mitigation and Revision

There are two prerequisites to using a mitigated Negative Declaration:

1. All potentially significant effects of the project can and will be avoided or mitigated to a level of insignificance by project revisions or other requirements imposed on the project. A mitigated Negative Declaration is based on the premise that the project will not result in a *significant* effect. For example, suppose a project would increase traffic from Level of Service (LOS) B to LOS D where local guidelines have identified LOS D as the threshold for significance. If mitigation can reduce the impact to LOS C, then the project’s impact would not be considered significant.
2. The project changes and mitigation measures must be agreed to or made by the proponent *before* the draft Negative Declaration is circulated for public review and comment. In other words, the draft document must reflect the revised project, with changes and mitigation measures. A few agencies apparently require proponents to submit a new project description before the draft mitigated Negative Declaration is released. This procedure is not required by CEQA if the proponent has otherwise agreed to or made the revisions and mitigations. However, requiring or allowing an applicant to adopt prospective mitigation measures which are to be recommended in a future study, but which are not incorporated into the project before the proposed Negative Declaration is released for public review, is not allowed (*Sundstrom v. County of Mendocino*, *supra*).

A key question for the Lead Agency is: What level of mitigation or project revision is sufficient to avoid or eliminate a potential significant effect? There is no ironclad answer which would apply in every instance. The answer depends upon the specific situation; the Lead Agency must use its own independent and objective judgment, based on the information before it, to determine that “clearly no significant effect on the environment would occur” (Section 21064.5). Further, there must be evidence in the record as a whole to support that conclusion.

Pursuant to Section 15370 of the *CEQA Guidelines*, mitigation includes:

“(a) Avoiding the impact altogether by not taking a certain action or parts of an action.

“(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

“(c) Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment.

“(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

“(e) Compensating for the impact by replacing or providing substitute resources or environments.”

Project revisions may include such things as changes in design, location, operations, or scope. Effective project revisions will perform any or all of the above functions (a) through (e).

Effective mitigation measures are those written in clear, declaratory language specifying what is required to be done, how it is to be done, when it is to be done, and who will be responsible for doing it. The words “will” and “shall” are preferred to “may” and “should” when directing an action. Furthermore, measures must be feasible to undertake and complete. Avoid measures that are conditional upon feasibility (i.e., required only “when feasible”), rather than applied directly or at a specified project stage. Also avoid deferred mitigation and mitigation measures consisting of monitoring and future studies not tied to performance standards and contingency plans (*Sundstrom v. County of Mendocino*, *supra*).

Negotiations

Some jurisdictions require the applicant to sign the draft mitigated Negative Declaration, indicating agreement with the mitigation measures or project revisions included therein, prior to circulating the document. In others, the applicant and the agency may negotiate over the revisions or mitigation measures until they are mutually acceptable and enter into a more formal agreement. Whatever the procedure, agreement must be reached before the draft mitigated Negative Declaration is circulated for review and comment.

Appendix 2 contains examples of agreements between Lead Agencies and applicants over project mitigation and revision.

Other Considerations

A mitigated Negative Declaration is subject to the same consultation and notice requirements as any Negative Declaration (see Sections 21080.3, 21091, and 21092 for details on current requirements). Practitioners should note that AB 1888 shortened the minimum local review period for Negative Declarations from 21 to 20 days (a minimum of 30 days is still required for drafts submitted to the State Clearinghouse) and revised Section 21092 to require that the notice of a draft Negative Declaration include an address where copies of the draft and all documents referenced in the draft will be available for review during the comment period.

The Lead Agency must consider the comments it receives during the review period prior to adopting a mitigated Negative Declaration. If these comments include substantial evidence that a potential environmental effect may occur despite the project revisions or mitigation measures included in the mitigated Negative Declaration, the Lead Agency must either require further revisions to the project which would effectively avoid or mitigate that effect, or if that is not possible, prepare an EIR. Although not explicitly required by CEQA, OPR recommends that under the first circumstance the Lead Agency recirculate the revised mitigated Negative Declaration for review prior to acting on the project and adopting the document. This ensures that the public will have been afforded the

chance to review the new mitigation measures as well as the revised project (*Leonoff v. Monterey County Board of Supervisors* (1990) 222 Cal.App.3d 1337 and *Perley v. County of Calaveras* (1982) 137 Cal.App.3d 424). As before, the proponent must have agreed to or made the additional project changes before the mitigated Negative Declaration is recirculated.

Upon adopting a mitigated Negative Declaration, the Lead Agency must make both of the following findings:

1. Revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur.
 2. There is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.
- (Sections 21064.5 and 21080(c)).

Revising Mitigation Measures

If the lead agency concludes prior to approval of a project that one or more of the mitigation measures identified in the Negative Declaration are infeasible or otherwise undesirable, Section 21080(f) provides that the lead agency may delete those measures and substitute other equivalent or better measures without having to recirculate the mitigated Negative Declaration for review. The lead agency must: (1) hold a public hearing on the matter before substituting new mitigation measures; (2) impose the new measures as conditions of project approval or otherwise make them a part of the project approval; and (3) find that the new measures will effectively reduce potentially significant effects to a level of insignificance and will not cause any potentially significant effects of their own.

When a mitigation measure imposed as a condition of project approval is set aside by either an administrative body or a court, the lead agency's approval of the mitigated Negative Declaration for the project is invalidated and a new environmental review is required. However, pursuant to Section 21080(g), the lead agency may avoid invalidation and the need for a new environmental review if it substitutes equivalent or better measures. The procedure and findings for substituting new measures is the same as described above.

One court has held that *after* project approval an agency has some flexibility in interpreting the manner in which mitigation measures are complied with, within reasonable bounds. "[T]he agency's interpretation is reasonable in the CEQA context only if it imposes no significant new or adverse environmental impacts. Such a standard would promote the Legislature's expressed concern for balancing environmental considerations against the social and economic burdens of compliance with CEQA mandates" (*Stone v. Board of Supervisors* (1988) 205 Cal.App.3d 927, 934). Although the court allowed the defendant county to substitute one means of complying with a mitigation measure for its functional equivalent, it also implied that actually amending a mitigation measure would require further CEQA review.

Mitigation Monitoring or Reporting Program

Upon approving a project for which a mitigated Negative Declaration is adopted, the Lead Agency must also adopt a mitigation monitoring or reporting program pursuant to Section 21081.6. The purpose of the program is to ensure compliance with the required mitigation measures or project revisions during project implementation. Section 21081.6 also requires that mitigation measures be adopted as conditions of approval. A detailed discussion of program requirements is contained in OPR's publication *Tracking CEQA Mitigation Measures Under AB 3180*.

Use With Other Documents



In a number of situations where an environmental document has already been prepared, a mitigated Negative Declaration may be sufficient to address subsequent projects which have been largely examined in the previous document and which will have no unavoidable significant impacts. The most common of these and suggested findings for adopting a mitigated Negative Declaration are summarized below. In no case where a mitigated Negative Declaration is being adopted is it necessary to also adopt EIR findings pursuant to Section 21081.

Master EIR

The “Master EIR” is a 1994 statutory innovation intended to provide a detailed environmental review of plans and programs upon which the analysis of subsequent related development proposals can be based. Pursuant to AB 1888 of 1993, its enabling legislation, a Master EIR must, to the greatest extent feasible, evaluate the cumulative impacts, growth inducing impacts, and irreversible significant effects on the environment of specific, subsequent projects. The review of later projects which were described in the Master EIR can be limited to the extent that the Master EIR has already reviewed project impacts and set forth mitigation measures (Section 21156).

AB 1888 provides that a mitigated Negative Declaration shall be prepared for a later project identified in a Master EIR when there is no substantial evidence before the Lead Agency that the project may have a significant effect on the environment and both the following occur:

1. An initial study has identified potentially new or additional significant effects on the environment that were not analyzed in the Master EIR.

2. Feasible mitigation measures or alternatives will be incorporated to revise the proposed later project, before the mitigated Negative Declaration is released for public review, such that the new potential significant effects are eliminated or reduced to a level of insignificance. (Section 21157.5)

The subsequent project must incorporate all applicable mitigation measures or project alternatives from the Master EIR, as well as the measures adopted pursuant to the mitigated Negative Declaration.

Findings — Upon adopting a mitigated Negative Declaration under these circumstances, OPR recommends that the Lead Agency make the following findings pursuant to Sections 21064.5, 21080(c), and 21157.5.

1. The subsequent project is identified in the Master EIR.
2. The project incorporates all applicable mitigation measures or project alternatives from the Master EIR.
3. There is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.
4. Feasible mitigation measures or alternatives will be incorporated to revise the proposed later project, before the mitigated Negative Declaration is released for public review, such that the potential significant effects are eliminated or reduced to a level of insignificance.

Tiering

CEQA Guidelines Section 15152 (Section 21083.3) allows a Negative Declaration to be adopted when an EIR has previously been pre-

pared for a program, policy, plan or ordinance, and a later project consistent with that program or other action will not result in any significant effects which were not examined in that previous EIR. In order to tier upon an EIR, the later project must be consistent with the general plan and zoning of the applicable city or county. The Negative Declaration must clearly state that it is being tiered upon a previous EIR, reference that EIR, and state where a copy of the EIR can be examined.

This section of the *Guidelines* applies equally to a mitigated Negative Declaration. Of course, any potential significant effects that were not examined in the previous EIR must be avoided or completely mitigated if a mitigated Negative Declaration is to be adopted. This includes unavoidable significant cumulative effects. A mitigated Negative Declaration is not recommended when the document on which it is being tiered has identified unavoidable significant cumulative effects.

Findings — In addition to the findings required of a mitigated Negative Declaration pursuant to Sections 21080 and 21064.5, OPR recommends that the Lead Agency find that:

1. The project is consistent with the program, policy, plan or ordinance for which the previous EIR was prepared;
2. The project is consistent with the general plan and zoning of the applicable city or county; and
3. The project, as revised or mitigated, will not result in any significant effects which were not examined in the previous EIR.

Program EIR

Section 15168 of the *CEQA Guidelines* defines a “program EIR” as an EIR which may be prepared on a series of related actions which can be characterized as one large project. A program EIR can be used to support the determination made in an initial study to prepare either a Negative Declaration or an EIR for a later project under the program.

Pursuant to subdivision (c) of Section 15168, a mitigated Negative Declaration prepared for a later project under the program would focus on

new effects which had not previously been considered in the program EIR, and which can be reduced to insignificance by mitigation measures or revisions incorporated into the project. In addition to these measures or revisions, the project must incorporate all applicable mitigation measures and alternatives identified in the program EIR (Section 15168(c)). As mentioned under tiering, a mitigated Negative Declaration is not recommended when the program EIR identified unavoidable significant cumulative effects.

Findings — OPR recommends that, in addition to the findings required under Sections 21080(c) and 21064.5, the Lead Agency find:

1. The project is consistent with the program for which the program EIR was prepared;
2. New effects which had not previously been considered in the program EIR will be reduced to insignificance by mitigation measures or revisions incorporated into the project; and
3. The project incorporates all applicable mitigation measures and alternatives identified in the program EIR.

Subsequent Negative Declaration

Section 15162 of the *CEQA Guidelines* provides that where an EIR or Negative Declaration has been certified or adopted for a project, no additional EIR need be prepared for the same project unless there is substantial evidence before the agency that any of the following have occurred:

1. Subsequent changes are proposed in the project which will require important revisions of the previous EIR or Negative Declaration due to new significant effects not considered in the previous EIR or Negative Declaration.
2. Substantial changes occur with respect to the circumstances under which the project is undertaken which will require important revisions in the previous EIR or Negative Declaration due to the involvement of new significant effects not considered in the previous EIR or Negative Declaration.
3. New information relating to the significant effects of the project and means of reducing

or avoiding those effects, which was not known and could not have been known at the time the previous EIR or Negative Declaration was certified or adopted, becomes available. “New information” is further defined in Guidelines Section 15162(a)(3).

Because the project has already been the subject of either an EIR or Negative Declaration and the time for challenging the adequacy of the previous document is passed, the “fair argument” test does not apply (*Bowman v. City of Petaluma* (1986) 185 Cal.App.3d 1065). Unlike under the fair argument test, the Lead Agency is judged by the “traditional substantial evidence” test. In other words, it need not prepare an EIR when substantial evidence exists for the occurrence of a significant effect, as long as the Lead Agency has substantial evidence showing none of the three situations described above exist.

In the initial review of a project, the Lead Agency’s decision to prepare an EIR is governed

by the “fair argument” text: the Lead Agency must prepare an EIR if there is substantial evidence that a significant impact will result. However, after the project has already been the subject of either an EIR or Negative Declaration and the time for challenging the previous environmental document is passed, the fair argument test does not apply. Instead, the Lead Agency’s decision regarding the preparation of a subsequent or supplemental EIR is governed by the “substantial evidence” test. That is, the courts will respect the Lead Agency’s decision not to prepare a subsequent or supplemental EIR if there is substantial evidence in the record supporting the Lead Agency’s finding that none of the three conditions exist that would warrant preparation of subsequent or supplemental EIR under Section 15162 of the Guidelines.

Findings — The findings required under Sections 21064.5 and 21080 should be sufficient.

Court Scoreboard



In recent years, the courts have supported the use of mitigated Negative Declarations where the lead agency has been careful neither to ignore substantial evidence of one or more significant effects, nor attempted to defer mitigation. Following are very brief summaries of additional cases involving mitigated Negative Declarations. Refer to the cases themselves for more specific information.

Mitigated Negative Declaration Upheld

San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus (1996) 42 Cal.App.4th 608

Here the court upheld a mitigated Negative Declaration for a surface mining operation where there was no substantial evidence to support a fair argument of significant effect. The plaintiff's claim that the project would result in cumulative effects on birds, including the Swainson's Hawk, was vague and unsubstantiated by facts or expert opinion. The County, on the other hand, had three biologists confirm that the project would have no impact on endangered species. Further, the court affirmed, based on the *Leonoff* decision, that absent substantial evidence that the project would have a considerable incremental effect, and in the presence of expert testimony that it would not, an in-depth study of potential cumulative impacts was not a prerequisite to preparing a mitigated Negative Declaration.

Citizens for Responsible Development in West Hollywood v. City of West Hollywood (1995) 39 Cal.App.4th 925

The court affirmed the city's mitigated Negative Declaration for a 40-unit low-income housing project which would rehabilitate and restore two craftsman-style homes on the front of the property and demolish another four buildings in the rear. West Hollywood had established a

"Craftsman District" which encompassed the front buildings for purposes of historic preservation and established a Cultural Heritage Advisory Board (CHAB) to evaluate proposed activities within the district. The housing project was reviewed and approved by the CHAB as being benign relative to the architectural features and historic value of the front buildings and in conformance with the Secretary of Interior's rehabilitation standards.

The court found that there was no substantial evidence to support Citizen's claim that a historical resource was being adversely affected. Those structures deemed to be of historical importance were being rehabilitated and restored in accordance with adopted city, state, and federal regulations. The structures proposed for demolition were neither on a historic register nor eligible for listing in the California Register, and their potential historical significance had been duly investigated by the city during creation of the Craftsman District and dismissed.

Citizens' Committee to Save Our Village v. City of Claremont (1995) 37 Cal.App.4th 1157

The city did not abuse its discretion by rejecting as irrelevant and untimely "new evidence" submitted by project opponents regarding a mitigated Negative Declaration for a new, two-story college building. In prior litigation on the project, the trial court had ordered the city to make findings to support the mitigated Negative Declaration. The project's opponents attempted to introduce new evidence at the hearing that the project would adversely affect a historically significant landscape garden. The court concluded that the material presented at the hearing was not new and that no substantial evidence existed that a landscape garden planned for the project site in 1905 had ever been installed or maintained. Without evidence of an impact, no EIR was required.

Mitigated Negative Declaration Overturned

League for Protection of Oakland's Architectural and Historic Resources v. City of Oakland, Feb. 10, 1997, 52 Cal.App.4th 896

The city approved a shopping center which proposed to demolish the old Montgomery Ward store. The city had adopted a mitigated Neg. Dec for the project, requiring that the store be documented before demolition, that the new center utilize design elements from the store, that a qualified archaeologist oversee the demolition, and other measures as mitigation for the impact on historical resources. Section 21084.1 provides that “[a] project that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment.” The court held that because the Ward building is eligible for historic status and is described as historic in the city’s general plan, Section 21084.1 requires the city to consider this action a significant effect requiring preparation of an EIR.

Stanislaus Audubon Society v. County of Stanislaus (1995) 33 Cal.App.4th 144

The court concluded that a country club and golf course proposed on agricultural land required preparation of an EIR. The court found that during the process of considering the project the county had been presented with an abundant

amount of substantial evidence, including testimony from its own planning staff in the initial study, to support a fair argument that the project would have a significant growth-inducing effect on the surrounding agricultural area.

Gentry v. City of Murrieta (1995) 36 Cal.App.4th 1359

The court set aside and ordered the city to reconsider the mitigated Negative Declaration for a proposed 500-lot subdivision. Substantial evidence existed that the project would adversely impact the endangered Stephens kangaroo rat. In addition, Murrieta attempted to defer mitigation of this impact pending further study, as held improper in *Sundstrom v. County of Mendocino*. The city had also made a variety of procedural errors in circulating the Negative Declaration for review.

Quail Botanical Gardens Foundation v. City of Encinitas (1994) 29 Cal.App.4th 1597

The court overturned a mitigated Negative Declaration for a 40-lot subdivision adjacent to the botanical garden on “fair argument” grounds. Expert testimony presented during the city’s consideration of the subdivision indicated that the project would obscure views of the ocean from the Gardens, resulting in a significant aesthetic impact that could not be completely mitigated. Since the impact could not be mitigated completely, a Negative Declaration could not be used.

Final Words



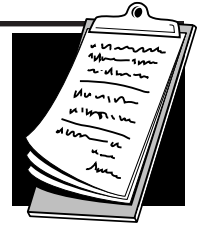
The use of mitigated Negative Declarations is nothing novel, having been affirmed by the courts as long ago as 1982 (*Perley v. County of Calaveras* (1982) 137 Cal.App.3d 424). AB 1888, by explicitly defining this term in CEQA, and SB 919, by establishing standards by which to judge the existence of substantial evidence and narrowing the importance of public controversy in the decision to require an EIR, have strengthened the grounds for using a mitigated Negative Declaration. As a result, Lead agencies should feel more confident with this CEQA tool.

The prerequisites for adopting a mitigated Negative Declaration include:

1. Making a good faith effort to determine whether there is substantial evidence that the project would result in any significant environmental effect.
2. Incorporating effective revisions or mitigation measures into the project to alleviate potential significant effects prior to circulating the draft Negative Declaration for public review.
3. Evidence in the record to support the agency's determination that there will be no significant effect as a result of the final project.

Appendix 1

Selected Excerpts from the Public Resources Code



Section 21064.5.

21064.5. "Mitigated negative declaration" means a negative declaration prepared for a project when the initial study has identified potentially significant effects on the environment, but (1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration is released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (2) there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.

Subdivision (e), Section 21080.

(e) (1) For the purposes of this section and this division, substantial evidence includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact.

(2) Substantial evidence is not argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment.

Section 21082.2.

21082.2. (a) The lead agency shall determine whether a project may have a significant effect on the environment based on substantial evidence in light of the whole record.

(b) The existence of public controversy over the environmental effects of a project shall not require preparation of an environmental impact report if there is no substantial evidence in light of the whole record before the lead agency that the project may have a significant effect on the environment.

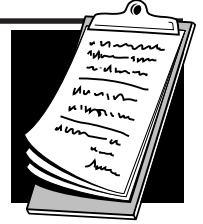
(c) Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous, or evidence of social or economic impacts which do not contribute to, or are not caused by, physical impacts on the environment, is not substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.

(d) If there is substantial evidence, in light of the whole record before the lead agency, that a project may have a significant effect on the environment, an environmental impact report shall be prepared.

(e) Statements in an environmental impact report and comments with respect to an environmental impact report shall not be deemed determinative of whether the project may have a significant effect on the environment.

Appendix 2

**Examples of Project Mitigation
or Revision Agreements**



- Kern County
- Marin County
- City of Stockton
- Ventura County